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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

       Plaintiff,

     v.

CLIFFORD BAIRD,

       Defendant.

Case No.   CR02-256P

PROCEDURAL ORDER

     This case comes before the court for consideration of resentencing pursuant to the remand of the Ninth Circuit Court of Appeals and United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005). A clarifying procedural order should now be entered.

     In accord with Ameline, each party may file a pleading addressing the sole question of whether the sentence imposed would have been materially different had the district court known that the sentencing guidelines were only advisory. The court is mindful that the burden of proof is on the defendant to prove the positive of the stated proposition, and the court assumes that the burden is by a preponderance of the evidence. Counsel should be mindful that the question at this point is not whether the defendant should have received a different sentence. Those questions may be addressed if a resentencing is ordered.

PROCEDURAL ORDER - 1

1   On review of the aforementioned pleadings, the presentence investigations, and transcripts of

2   the sentencing, (if available), the court will either grant resentencing, deny resentencing, or order oral

3   argument or an evidentiary hearing on whether there should be a resentencing.

4   Such pleadings should be filed not later than **October 25, 2005.**

5   **IT IS SO ORDERED.**

6   The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of

7   record and to any party appearing *pro se* at said party's last known address.

8   DATED this 4th day of October, 2005.   day of

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10   /S/Marsha J. Pechman
     United States District Judge

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PROCEDURAL ORDER - 2